



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

ELICEO FARIAS-CARDENAS,
Petitioner,

vs.

WARDEN JANSON,
Respondent.

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Civil Action No. 5:23-4167-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING PETITION WITHOUT PREJUDICE**

Petitioner Eliceo Farias-Cardenas (Farias-Cardenas) filed a petition for habeas corpus under 28 U.S.C. § 2241 against Respondent Warden Janson (Janson).

This matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending the Court dismiss Farias-Cardenas's petition without prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 22, 2023. The Clerk's Office docketed Farias-Cardenas's objections on October 13, 2023.

Farias-Cardenas objects to the Magistrate Judge's determination the Court is unable to resolve his petition because he is outside the custody of Immigration and Customs Enforcement.

Farias-Cardenas alleges Janson is preventing him from receiving earned time credits under the First Step Act (ETCs) because he is subject to an immigration detainer. He thus requests the Court order an immigration hearing "to establish he is not deportable." Memorandum in Support of Petition at 1.

In March 2023, five months before Farias-Cardenas filed his petition, the Bureau of Prison changed its procedures to allow prisoners subject to detainers to apply ETCs. *See Change Notice: First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4), Program Statement 5410.01*, BOP, at 3 (March 10, 2023) (striking language that stated inmates with detainers were unable to apply ETCs).

An immigration hearing, then, will fail to address Farias-Cardenas's concerns. Thus, the Court is unable to grant Farias-Cardenas the relief he seeks. It will therefore overrule his objection.

The Court will, however, provide Farias-Cardenas to amend his petition. Fed. R. Civ. P. 15(a)(2) (Courts "should freely give leave [to amend pleadings] when justice so requires.").

After a thorough review of the Report and the record in this case under the standard set forth above, the Court overrules the objections, adopts the Report to the extent it does not contradict this order, and incorporates it herein. Therefore, it is the judgment of the Court Farias-Cardenas's petition is **DISMISSED WITHOUT PREJUDICE**.

Farias-Cardenas may file an amended petition no later than **May 13, 2024**.

The amended petition shall replace the original petition in this matter, and thus should include all facts and claims. *See Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) (“As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.”) (citation and internal quotation marks omitted).

The Clerk’s Office is directed to withhold entry of judgment until May 10, 2024, at which time it shall enter judgment if Farias Cardenas fails to file an amended complaint. If he does file an amended complaint, however, the Clerk’s Office is directed a refer this case to the Magistrate Judge for further review.

To the extent Farias-Cardenas seeks a certificate of appealability, that request is **DENIED**.

IT IS SO ORDERED.

Signed this 16th day of April 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.